

REMARKS

This communication is submitted in response to the Office Action dated April 25, 2007. Claims 5-7 and 13-16 are pending in the subject patent application, with claims 5 and 6 being currently amended, claims 1-4 and 8-12 being cancelled, and claims 13-16 being newly presented herewith. Claim 7 has not been changed relative to its immediate prior version. Claims 1-4 and 8-12 were withdrawn from consideration by the Examiner as being directed to non-elected inventions.

Support for the amended and newly presented claims is found throughout the specification as originally filed, such that the amended and newly presented claims do not introduce any new matter.

Reconsideration of the subject patent application is respectfully requested in view of the foregoing amendments and the following remarks.

The provisional election previously made, without traverse, by telephone to prosecute the invention of Group 2, corresponding to claims 5-7, is hereby affirmed.

The rejection of claims 5-7 as being anticipated by Krause et al is respectfully traversed for the following reasons.

Independent claim 5 pertains to a method of performing a surgical procedure on a patient. The method comprises the steps of "treating tissue of the patient with an elongate blade assembly formed of a first elongate outer tubular member having a first configuration and a distal end with an opening therein and an inner elongate member rotatably disposed in the first outer member and having a cutting tip disposed adjacent the opening in the distal end of the first outer member, the outer and inner members having proximal ends removably attached to a handpiece that rotates the inner member within the first outer member to cause the cutting tip of the inner member to contact and

treat tissue at the opening in the distal end of the first outer member; detaching the blade assembly from the handpiece and removing the inner member from the first outer member during the surgical procedure on the patient; inserting the inner member in a second elongate outer tubular member having a second configuration different from the first configuration and a distal end with an opening therein such that the cutting tip of the inner member is disposed adjacent the opening in the distal end of the second outer member; attaching the proximal ends of the inner member and the second outer member to the handpiece; and continuing to treat tissue of the patient during the surgical procedure by rotating the inner member within the second outer member and contacting the tissue with the cutting tip of the inner member at the opening in the distal end of the second outer member." It is maintained that Krause et al does not disclose a method of performing a surgical procedure as claimed in independent claim 5.

Krause et al discloses several embodiments of surgical instruments that include a rigid outer member and an inner member rotatably disposed in the outer member and having a flexible region between rigid proximal and distal ends. In connection with surgical instrument 10 comprised of outer tube 12 and inner tube 14, Krause et al discloses the proximal end 36 of outer tube 12 rigidly mounted to a base 38, and the proximal end 17 of inner tube 14 secured to a driveshaft 42 that rotates within the base 38. Krause et al discloses the base 38 as being removably attachable to a handpiece 50 that rotates the driveshaft 42 and inner tube 14, but does not disclose the inner tube 14 as being removable from the outer tube 12. In particular, Krause et al refers to the driveshaft 42 as being retained within the base 38 (col. 4, lines 52-53). The driveshaft 42 being retained within the base 38 by inference leads to the conclusion that the inner tube 14 is not removable from the outer tube 12 since both are secured or retained to

the base 38. The instrument 10 disclosed by Krause et al is comprised of a straight outer tube 112 and an inner tube 114 having a flexible region 16 rotatably disposed in the outer tube 112. Although Krause et al discloses the outer tube 112 as being longitudinally straight whereas the outer tube 12 is disclosed as being angled, there are no teachings or suggestions whatsoever by Krause et al that the inner tube 14 of the instrument 10 is insertable and removable from both the outer tube 12 and the outer tube 112. Notably, Krause et al does not disclose the inner tube 114 of instrument 110 as being the inner tube 14; rather, Krause et al discloses only that the inner tube 114 has a flexible region 16 like that of the inner tube 14.

Not only does Krause et al fail to disclose instrumentation having the features needed to carry out the method of performing a surgical procedure as recited in claim 5, the surgical procedure disclosed by Krause et al does not involve the steps recited in independent claim 5. Krause et al discloses only that the surgical instrument 10 is inserted onto the handpiece 50 and is introduced into the knee joint 80 where the inner tube 14 is rotated by the handpiece in order to cut tissue with the instrument 10. Nowhere in Krause et al's discussion of the surgical procedure (col. 7, line 18 - col. 8, line 46) does Krause et al disclose or demonstrate any contemplation to detach the instrument 10 from the handpiece 50 and remove the inner member 14 from the outer member 12 during the surgical procedure, to insert the inner member 14 in the outer member 112, to attach the proximal ends of the inner member 14 and the outer member 112 to the handpiece 50 and to continue to cut tissue of the patient by rotating the inner member 14 within the outer member 112. The Examiner refers to col. 9, lines 16-30 of Krause et al as disclosing the step of removing the inner member from the first outer member, but in fact this step is not disclosed by the passage of Krause et al that

is relied on by the Examiner. In Col. 9, lines 16-30 of Krause et al describe the embodiment of instrument 110 comprised of outer tube 112 and inner tube 114 and, as pointed out above, there are no teachings or suggestions whatsoever by Krause et al of the inner tube 114 being the same inner tube 14 that was previously disposed in outer tube 12. The Examiner further asserts that Krause et al discloses the step of inserting the inner member 120 in a second elongate outer tubular member 12. However, there is absolutely no teaching whatsoever by Krause et al that the inner tube 120 was removed from a different outer member during a surgical procedure on a patient prior to being inserted in the outer member 12. As previously noted, Krause et al fails to disclose or suggest a method of performing a surgical procedure having the steps recited in claim 5, and the Examiner has improperly taken isolated random features of the various embodiments of surgical instruments disclosed by Krause et al and has combined them in a disjointed manner in an attempt to arrive at the claimed method. It is submitted that independent claim 5 is clearly patentable over Krause et al and should be allowed along with its dependent claims 6, 7 and 13-16.

In light of the foregoing, the subject patent application is submitted to be in condition for allowance. Action in conformance thereto is courteously solicited. Should any issues in the subject application remain unresolved, the Examiner is encouraged to contact the undersigned attorney.

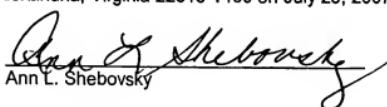
Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop: Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on July 23, 2007.


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